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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,336	05/19/2005	Haruki Kitamura	21089/0207148-US0	8390

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EXAMINER	
CHRISS, JENNIFER A	
ART UNIT	PAPER NUMBER
1794	
MAIL DATE	DELIVERY MODE
10/17/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/510,336	KITAMURA ET AL.	
	Examiner	Art Unit	
	JENNIFER A. CHRISS	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 June 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) *6-9* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *05 October 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *02/24/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1 – 5, in the reply filed on June 9, 2008 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 recites that "each of the yarns being a sheath-core structure yarn". The language is confusing as it is unclear whether each individual yarn is in a sheath-core configuration or that each are used as either a sheath yarn or a core yarn in a composite structure as implied by the use of phrases "a core yarn" and "a sheath yarn" in claim 3. For purposes of examination at this time, the Examiner is interpreting the limitation as requiring that at least one multifilament yarn is a used as a core yarn and at least one multifilament yarn is used as a sheath yarn and they are combined to create a sheath-core composite yarn. If this is what the Applicant intends, the Examiner submits that it is not clearly reflected by the claim language and should be amended to clarify.

Claim Rejections - 35 USC § 102/103

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Murakami et al. (US 6,074,751).

Murakami et al. is directed to a composite textured yarn (Title).

As to claim 1, Murakami et al. teach a composite yarn having a sheath-core structure comprising component yarn A and component yarn B each false twisted and crimped (column 1, lines 14 – 25 and column 2, lines 55 – 65). The component yarn A and component yarn B have a different length (column 2, lines 65 – 68 and column 3, lines 1 – 15). Murakami et al. teach that the composite yarn has loops, snarls, slackened portions or fluff, etc. formed due to the difference in respective yarn lengths and the yarn preferably has 40 or more projected fibers per meter, specifically a fiber projecting 1 mm or more in length from the surface of a yarn in the form of a loop or other configuration (column 5, lines 65 – 68 and column 6, lines 1 – 10). It should be noted that the 40 or more projected fibers per meter having a length of 1 mm or more meets Applicant's claim limitation of 0.7 mm to 1.2 mm length loops at 50 to 300 loops

per meter. Murakami et al. does not specifically indicate that a second set of loops are present with a length of 1.2 mm or more, however, Applicant requires that the loops are present in an amount ranging from 10 or less loops per meter. It should be noted that 0 loops per meter having a length of 1.2 or more meets Applicant's claim language. Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

As to claims 2 and 5, Murakami et al. teach the claimed invention above but fails to teach that the thread has a strength of 4 to 6 cN/dtex and the average rate of

variations in sewing tension of the thread is within -10% to +10%. It is reasonable to presume that the above properties are inherent to Murakami et al. Support for said presumption is found in the use of like materials (i.e. a composite yarn having a sheath-core structure comprising component yarn A and component yarn B each false twisted and crimped where yarns A and B have a different length and the composite yarn has 40 or more projected fibers or loops per meter, specifically a fiber projecting 1 mm or more in length from the surface of a yarn) which would result in the claimed properties. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties would obviously have been present once the Murakami et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

Claim Rejections - 35 USC § 103

8. Claims 3 – 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murakami et al. (US 6,074,751).

Murakami et al. discloses the claimed invention except for that the difference in yarn length ranges from 2 to 20% or 3 to 10%. It should be noted that the difference in yarn lengths are result effective variables. Murakami et al. note that the difference in yarn lengths along with the yarn configuration provides the looped surface structure (column 5, lines 65 – 68 and column6, lines 1 – 15). Therefore, adjusting the relative length between the yarns is established as a result effective variable which directly impacts the frequency and/or length of the loops on the surface of the composite yarn. It

would have been obvious to one having ordinary skill in the art at the time the invention was made to create the composite yarn with a difference in yarn lengths as indicated above since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have been motivated to optimize the difference in yarn lengths depending on the desired loop structure of the composite yarn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER A. CHRISS whose telephone number is (571)272-7783. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 6 p.m., first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jennifer A Chriss/
Examiner, Art Unit 1794

/J. A. C./
Examiner, Art Unit 1794